

Dear Kathleen --

In reviewing your OGE-278 (Public Financial Disclosure Report) in INTEGRITY, we noticed that you reported owning certain interests that might be affected by the performance of your official duties. These assets appear to be over the regulatory thresholds, so we are sending you this cautionary letter to remind you to take appropriate steps to ensure that you do not have a conflict of interest. We are not concluding that you currently have a conflict of interest; rather, you should read the information below and contact an ethics official if you have any questions. Remember, it is your obligation to ensure that your private interests (including your assets) do not conflict with your public duties. Be vigilant!

#### Why Do We Raise Concerns?

A criminal statute, 18 U.S.C. §208(a), bars you from participating in any “particular matter” that affects any of your own interests or any imputed interest (e.g., spouse or dependent children). Your interests include not only ownership interests (e.g., stock, bonds, mutual funds) but also the interests of outside entities (e.g., any organization in which you are serving as an officer, director, or trustee) and prospective employers (any entity with which you are seeking future employment). So you can’t participate in any particular matter that will have a direct and predictable effect on your financial interest.

The important point to remember here is that 18 U.S.C. §208(a) is a criminal statute. A knowing violation of this statute can result in criminal prosecution and penalties. It’s important to understand the elements of the financial conflict of interest statute. You have to participate “personally and substantially” in a “particular matter” in order for there to be a conflict of interest, and there has to be a “direct and predictable” effect on your financial interests.

#### What is a particular matter?

A “particular matter” involves any deliberation, decision or action and that is focused on the interests of specific persons/organizations or any identifiable class of persons. It includes “specific party” matters (e.g., contracts, grants, assistance agreements, lawsuits, enforcement action, permits, licenses, audits) and matters of “general applicability” (e.g., rulemaking or policy matters) that distinctively affect a particular industry or identifiable class of persons.

#### What is “personal and substantial” participation?

*Personal participation* means that you were personally involved in the matter or that you directed or controlled a subordinate’s participation. *Substantial participation* means that your involvement in the matter was of significance, which includes decision-making, review or recommendation as to an action being taken, signing or approving a final document, and/or participating in a final decision briefing.

#### What is a “direct and predictable” effect on a financial interest?

The effect must be direct and predictable and not speculative (though the actual dollar amount does not need to be ascertained). There must be close causal link between any decision or action to be taken in the matter and any expected effect of the matter on the financial interest.

### YOUR FINANCIAL INTEREST(S) OF CONCERN

We identified the following financial interest(s) that may be affected by the performance of your official duties and that exceed the regulatory exemption levels. This does not necessarily mean that you have a current conflict of interest, but we want to flag the asset(s) for you:

(b) (6), (b) (3) (A)

[REDACTED]

### Regulatory Exemption Levels

There are different regulatory exemption levels, depending on the type of particular matter. You can still participate if you own less than the levels below:

SPECIFIC PARTY MATTER e.g., an enforcement action against ABC Widget Company	MATTER OF GENERAL APPLICABILITY e.g., working on a rulemaking that affects all widget manufacturers
≤\$15,000 aggregate in ABC Widget Co.	≤\$25,000 aggregate in any one widget maker (e.g., ABC Widget Corp. or DEF Widget Corp.)
≤\$25,000 aggregate for any affected non-parties (e.g., DEF Widget Corp. which manufactures a similar product)	≤\$50,000 aggregate in all affected parties (all widget makers)

Don't forget that you have to add together your own ownership interest and any imputed interest. You also have to aggregate how many assets you own in the same sector.

EXAMPLE: You own \$8,000 worth of ABC Widget and your spouse also owns \$8,000. You cannot direct your staff to participate in an event at ABC Widget offices because you own more than \$15,000 in the company and cannot participate in any particular matter that involves or affects ABC Widget as a specific party.

EXAMPLE: Your father-in-law passed away recently and bequeathed to your spouse shares in an oil and gas company worth \$30,000. You can't work on a specific party matter involving that company and also now can't work on any rulemaking that affects all oil and gas companies.

### What to do if you're worried about a conflict

If you are concerned that you have a conflict, contact OGC/Ethics immediately. We will go over the available options for you. Typically, potential conflict of interests are resolved in one of the following ways:

- 1) Don't participate. This means that you do not participate in the matter at all, including attending meetings, receiving briefings or being copied on substantive documents. We recommend that you document your recusal in writing, with a copy to OGC/Ethics.
- 2) Divest entirely or get below the regulatory threshold. You can either sell outright on your own or, if the sale will result in a tax liability for capital gains, then you may instead contact OGC/Ethics for a "Certificate of Divestiture" before you sell. This will enable you to defer capital gains tax, but you have to ask OGC/Ethics for assistance before you divest.
- 3) Ask for a waiver. Only the Agency's Designated Agency Ethics Official (DAEO) in OGC is authorized to waive the prohibition of 18 U.S.C. §208(a) where the interest is "not so substantial as to be deemed likely to affect the integrity of services which the Government may expect." OGC must consult with another federal agency before issuing a waiver, which are rarely granted.

\* \* \* \* \*

If you need more information or advice, feel free to contact OGC/Ethics at [ethics@epa.gov](mailto:ethics@epa.gov) or any of us individually (Margaret Ross, Justina Fugh, Jeanne Duross, Jennie Keith). Any of us or your regional ethics counselor will be happy to assist you.

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The important point to remember here is that 18 U.S.C. §208(a) is a criminal statute. A knowing violation of this statute can result in criminal prosecution and penalties. It’s important to understand the elements of the financial conflict of interest statute. You have to participate “personally and substantially” in a “particular matter” in order for there to be a conflict of interest, and there has to be a “direct and predictable” effect on your financial interests.

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(b) (6), (b) (3) (A)

[REDACTED]

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Don't forget that you have to add together your own ownership interest and any imputed interest. You also have to aggregate how many assets you own in the same sector.

EXAMPLE: You own \$8,000 worth of ABC Widget and your spouse also owns \$8,000. You cannot direct your staff to participate in an event at ABC Widget offices because you own more than \$15,000 in the company and cannot participate in any particular matter that involves or affects ABC Widget as a specific party.

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\* \* \* \* \*

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\* \* \* \* \*

If you need more information or advice, feel free to contact OGC/Ethics at [ethics@epa.gov](mailto:ethics@epa.gov). Any of us will be happy to assist you.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IX  
75 Hawthorne Street  
San Francisco, CA 94105

MEMORANDUM

FROM: Kathleen Johnson *KHJ*  
Director, Office of Enforcement

TO: Deborah Jordan  
Acting Deputy Regional Administrator/Deputy Ethics Official, Region IX

Sylvia Quast  
Regional Counsel/ Deputy Ethics Official, Office of Regional Counsel

DATE: November 7, 2017

SUBJECT: Updated Recusal

As Director of the Office of Enforcement, I want to ensure I take the appropriate steps to avoid any actual or perceived conflict of interest. As required by 18 U.S.C. Sec. 208(a), I will not participate personally and substantially in any particular matter that has a direct and predictable effect on my financial interests or those of any other person whose interests are imputed to me unless I first obtain a written waiver, pursuant to Sec. 208 (b)(1), or qualify for a regulatory exemption, pursuant to Sec. 208(b)(2). Therefore, I recuse myself from personally and substantially participating in any Agency business decision or policy matter that may have a direct and predictable effect on my financial interests or the financial interests of those with whom I have a covered relationship.

I further understand that pursuant to 5 CFR 2635.502 I cannot participate personally and substantially in any particular matter involving specific parties that would cause a reasonable person with knowledge of the relevant facts to question my impartiality.

Therefore, I recuse myself from participating personally and substantially in any particular matter, including but not limited to any permit decision, enforcement action, grant decision, rulemaking, or policy matter that directly affects any project undertaken by the following organizations:

(b) [REDACTED]

cc: Dan Fort (OGC-Ethics Office)  
Steven L Jawgiel (ORC-1)



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

JUL 10 2019

OFFICE OF  
ENFORCEMENT AND  
COMPLIANCE ASSURANCE

**MEMORANDUM**

**FROM:** Kathleen Johnson *KJ*  
Senior Policy Advisor

**TO:** Lawrence E. Starfield  
Principal Deputy Assistant Administrator  
Deputy Ethics Official  
Office of Enforcement and Compliance Assurance

**SUBJECT:** Updated Recusal

As Senior Policy Advisor, OECA, I want to take the appropriate steps to avoid any actual or perceived conflict of interest. As required by the federal financial conflict of interest law, 18 United States Code (U.S.C.) § 208(a), I will not participate personally and substantially in any particular matter that has a direct and predictable effect on my financial interests or the financial interests of any other person whose interests are imputed to me unless I first obtain a conflict of interest waiver pursuant to 18 U.S.C. § 208(b)(1) or qualify for a regulatory exemption pursuant to 18 U.S.C. § 208(b)(2).

This memorandum provides you with written notification of my obligation to recuse from certain matters in which I have a financial interest. This memorandum updates the recusal memorandum dated April 17, 2018. Because of the current level of my financial ownership, I am disqualified from participating personally and substantially in any particular matter that affects the following entities as specific parties such as any permit or license decision or enforcement action:

RECUSAL LIST – SPECIFIC PARTY MATTERS			
	(b) (6)		(b) (6)

In addition, I am disqualified from participating personally and substantially in any particular matter of general applicability that is focused on the interests of any individual discrete and identifiable class of sectors identified below. This prohibition extends to each class or sector individually.

RECUSAL LIST – INDIVIDUAL SECTORS	
Oil & Gas/Energy	

If a matter affects all sectors or if a particular matter affects a combination of sectors, including the ones listed above, then I understand that I do not have a financial conflict of interest and may

participate in the matter.

In order to ensure that I do not participate in matters relating to any of the entities listed above, I have taken or will take the following steps:

1. I have instructed Cari Shiffman, OECA Assistant Deputy Ethics Official, to screen all EPA matters directed to my attention that involve outside entities or that require my participation, to determine if they involve any of the entities or sectors listed above.
2. If Cari Shiffman determines that a particular matter will directly involve any of the companies listed on my "specific party" recusal list, then she will refer it for action or assignment to another, without my knowledge or involvement. If she identifies a particular matter of general applicability that is focused on the interests of any of the individual sectors on my recusal list, then she will refer it for action or assignment to another, without my knowledge or involvement. In the event that she is unsure whether an issue is a particular matter from which I am recused, then she will consult with the Office of General Counsel's Ethics Office for a determination. She understands that she is not authorized to make ethics determinations as to whether there is a direct and predictable financial effect and must instead consult with an authorized ethics official.
3. In the position of Senior Policy Advisor, I have no subordinates.
4. In consultation with the DEO, I will revise and update my recusal statement whenever warranted by changed circumstances, including changes in my financial interests, changes in my personal or business relationships, and/or when I change positions within EPA.
5. In the event of any changes to this screening arrangement, I will provide a copy of the revised recusal statement to the appropriate supervisor, the DEO, and any principal subordinates.

cc: Cari Shiffman  
OECA Chief of Staff  
Assistant Deputy Ethics Official

**From:** [Griffo, Shannon](#)  
**To:** [Johnson, Kathleen](#)  
**Subject:** RE: Follow-up Questions from OGC/Ethics on your Public Financial Disclosure Report  
**Date:** Monday, July 19, 2021 12:16:00 PM

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Hi Kathleen,

I think Justina already assigned you one in Integrity. I just checked and it's there, so sign into Integrity and see if you can access it. Let me know if you can't.

Thanks!

Shannon

Shannon Griffo

Office of General Counsel, Ethics Office

U.S. Environmental Protection Agency

(202) 564-7061

[Griffo.Shannon@epa.gov](mailto:Griffo.Shannon@epa.gov)

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**From:** Johnson, Kathleen <[Johnson.Kathleen@epa.gov](mailto:Johnson.Kathleen@epa.gov)>  
**Sent:** Monday, July 19, 2021 12:04 PM  
**To:** Griffo, Shannon <[Griffo.Shannon@epa.gov](mailto:Griffo.Shannon@epa.gov)>  
**Subject:** RE: Follow-up Questions from OGC/Ethics on your Public Financial Disclosure Report  
Hi Shannon,  
My retirement date is July 31. Can you send me the Termination 278? Thank you!  
Kathleen

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**From:** Griffo, Shannon <[Griffo.Shannon@epa.gov](mailto:Griffo.Shannon@epa.gov)>  
**Sent:** Wednesday, May 26, 2021 8:44 AM  
**To:** Johnson, Kathleen <[Johnson.Kathleen@epa.gov](mailto:Johnson.Kathleen@epa.gov)>  
**Subject:** RE: Follow-up Questions from OGC/Ethics on your Public Financial Disclosure Report  
Congrats on your retirement!! But I'm sorry to say that you will have one more report to do for us....the Termination Report. As it gets closer, let us know your exact departure date and we will assign you the Termination 278 to complete. It's due within 30 days after you retire and we can accept it as early as 15 days before your last day. That way, you can still use your PIV card to access INTEGRITY. If you submit the report after you leave federal service, however, then I'll need a personal email address to change your user ID. The reporting period for that report will be the current calendar year (2021) through your termination date.

Take care,

Shannon

Shannon Griffo

Office of General Counsel, Ethics Office

U.S. Environmental Protection Agency

(202) 564-7061

[Griffo.Shannon@epa.gov](mailto:Griffo.Shannon@epa.gov)

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**From:** Johnson, Kathleen <[Johnson.Kathleen@epa.gov](mailto:Johnson.Kathleen@epa.gov)>  
**Sent:** Tuesday, May 25, 2021 4:37 PM  
**To:** Griffo, Shannon <[Griffo.Shannon@epa.gov](mailto:Griffo.Shannon@epa.gov)>  
**Subject:** RE: Follow-up Questions from OGC/Ethics on your Public Financial Disclosure Report  
Thanks Shannon. And FYI, I plan to retire the end of July so this should be the last time I do this



report!

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**From:** Griffo, Shannon <[Griffo.Shannon@epa.gov](mailto:Griffo.Shannon@epa.gov)>

**Sent:** Tuesday, May 25, 2021 3:41 PM

**To:** Johnson, Kathleen <[Johnson.Kathleen@epa.gov](mailto:Johnson.Kathleen@epa.gov)>

**Subject:** RE: Follow-up Questions from OGC/Ethics on your Public Financial Disclosure Report  
Hi Kathleen,

Thanks for the quick response! I made those edits and certified your report.

Now as far as providing you with cautionary guidance, nothing has changed from the advice we've provided in the past in regards to your (b) (6) oil and gas exploration, extraction or production – including (b) (6), (b) (3) (A)

Under 18 U.S.C. § 208 (the financial conflict of interest statute), an employee who leases oil, gas, or other mineral rights is prohibited from participating personally and substantially in any particular matter that the employee knows would have a direct and predictable effect on the value of or income from the lease, or the lessee's ability or willingness to honor its contractual obligations. And under 5 C.F.R. § 2635.502 (the impartiality regulations), an employee has a "covered relationship" with the lessee(s). This means that you should not be working on any specific party matters involving those companies.

If you have any questions or need further advice in the future, please feel free to contact me or OGC/Ethics at [ethics@epa.gov](mailto:ethics@epa.gov).

Thanks!

Shannon

Shannon Griffo

Office of General Counsel, Ethics Office

U.S. Environmental Protection Agency

(202) 564-7061

[Griffo.Shannon@epa.gov](mailto:Griffo.Shannon@epa.gov)

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**From:** Johnson, Kathleen <[Johnson.Kathleen@epa.gov](mailto:Johnson.Kathleen@epa.gov)>

**Sent:** Tuesday, May 25, 2021 10:38 AM

**To:** Griffo, Shannon <[Griffo.Shannon@epa.gov](mailto:Griffo.Shannon@epa.gov)>

**Subject:** RE: Follow-up Questions from OGC/Ethics on your Public Financial Disclosure Report  
Hey Shannon,

Thank you for looking after my interests! Yes, I'd be happy if you would modify to provide the least information publicly available that is appropriate. Thank you!

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**From:** Griffo, Shannon <[Griffo.Shannon@epa.gov](mailto:Griffo.Shannon@epa.gov)>

**Sent:** Tuesday, May 25, 2021 10:11 AM

**To:** Johnson, Kathleen <[Johnson.Kathleen@epa.gov](mailto:Johnson.Kathleen@epa.gov)>

**Subject:** Follow-up Questions from OGC/Ethics on your Public Financial Disclosure Report  
Hi Kathleen,

I'm currently reviewing your Annual Report in Integrity and wanted to check in on two things:

1. Any objections to deleting the (b) (6)? Since your report is technically a public document that could be released if requested, I'm always inclined to take out such personal information.
2. And for your spouse's income, you do not need to give an exact amount. The value and income amount fields can be left blank. Then you'd simply put "salary" under income type.

Are you okay if I make that change? It would look like this:

<https://www.oge.gov/Web/278eGuide.nsf/a52c531944cfaa2d85257ea1004b1faa/5c0d1ec453bec22d85257f45005c6631?OpenDocument>

Again, I'm happy to make those changes for you so I don't have to send the report back to you in Integrity. Just let me know your thoughts on the above comments when you can.

Thanks!

Shannon

Shannon Griffo

Office of General Counsel, Ethics Office

U.S. Environmental Protection Agency

(202) 564-7061

[Griffo.Shannon@epa.gov](mailto:Griffo.Shannon@epa.gov)

**From:** [Johnson, Kathleen](#)  
**To:** [ethics](#)  
**Cc:** [Fugh, Justina](#)  
**Subject:** RE: need an extension  
**Date:** Monday, May 14, 2018 5:30:12 PM

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You are exactly right. After some back and forth, I did find my reset emails in my junk folder – not clutter, but junk. I would like 45 days, but we may actually be able to get it in on time if the site doesn't buckle. Thanks so much.

Kathleen H. Johnson  
Director, Enforcement Division  
U.S. EPA - Region 9  
75 Hawthorne Street ENF-1  
San Francisco, CA 94015  
415/972-3873  
[johnson.kathleen@epa.gov](mailto:johnson.kathleen@epa.gov)

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**From:** ethics  
**Sent:** Monday, May 14, 2018 2:18 PM  
**To:** Johnson, Kathleen <[Johnson.Kathleen@epa.gov](mailto:Johnson.Kathleen@epa.gov)>  
**Cc:** Fugh, Justina <[Fugh.Justina@epa.gov](mailto:Fugh.Justina@epa.gov)>  
**Subject:** RE: need an extension

Hi Kathleen,

Integrity has been having some problems today, yes. The likelier problem with the password, though, is that emails have been going straight to junk mail. Check there for the link, and if you have no luck, let me know.

You can get an extension of 45 days or 90 days. Which would you like?

Best,  
Margaret

**Margaret Ross** | Ethics Officer | Office of General Counsel | US EPA | William Jefferson Clinton Federal Building Room 4310A North | Washington, DC 20460 (for ground deliveries: 20004) | phone 202-564-3221

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**From:** Johnson, Kathleen  
**Sent:** Monday, May 14, 2018 12:58 PM  
**To:** ethics <[ethics@epa.gov](mailto:ethics@epa.gov)>  
**Subject:** need an extension

Justina and Margaret,

I'm having trouble getting into the system. My password has expired, I have requested a reset but I



have yet to get any kind of response. Just in case, can I have an extra week on the filing?

Thank you!

Kathleen H. Johnson  
Director, Enforcement Division  
U.S. EPA - Region 9  
75 Hawthorne Street ENF-1  
San Francisco, CA 94015  
415/972-3873  
[johnson.kathleen@epa.gov](mailto:johnson.kathleen@epa.gov)

**From:** [Fugh, Justina](#)  
**To:** [Johnson, Kathleen](#)  
**Cc:** [Griffo, Shannon](#)  
**Subject:** RE: retirement  
**Date:** Tuesday, July 6, 2021 1:44:00 PM  
**Attachments:** [Departing EPA for SL ST T42 ALJ employees updated January 2021.docx](#)

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Hi Kathleen,

Congratulations on your retirement! I've assigned you a termination report that will be due 8/30/21. Since you've already submitted your annual report, the reporting period for this last (yay!) report will be 1/1/21 to 7/31/21. That said, you may submit it as early as July 16. Thanks for taking the Leaving Federal Service course, and I've attached our chatty guide for SL/ST appointees. Since you have no plans for future employment, you can go ahead and self-certify on your separation checklist that you're meeting your ethics obligations. If you want, though, you may still schedule a post employment chat with either Shannon Griffo, copied here, or me. Shannon will be reviewing your termination 278 in due course.

Congratulations again!

Justina

Justina Fugh (she/her) | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

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**From:** Johnson, Kathleen <Johnson.Kathleen@epa.gov>  
**Sent:** Tuesday, July 06, 2021 12:28 PM  
**To:** Fugh, Justina <Fugh.Justina@epa.gov>  
**Subject:** retirement

Hey Justina,

I will be retiring July 31. I understand that I am supposed to fill out the OGE Form 278 within 30 days. Could I do so the last week before I retire? Also, I have taken the on-line training for separating employees. Do I need to do anything additional? (I am an S/L with NO plans to work – yeah!).

Thank you!

Kathleen

Kathleen H. Johnson  
Senior Policy Advisor  
Office of Enforcement and Compliance Assurance  
Cell phone 415-640-5476  
[Johnson.kathleen@epa.gov](mailto:Johnson.kathleen@epa.gov)



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
Washington, D.C. 20460

OFFICE OF  
GENERAL COUNSEL

UPDATED JANUARY 2021  
FOR SENIOR LEVEL (SL), SCIENTIFIC TECHNICAL (ST), TITLE 42, ALJ EMPLOYEES

**Ethical Rules Relating to Your Departure from EPA**

Thank you for your service to EPA and the Executive Branch. While you are planning your move to the next phase of your career or retirement, you have continuing ethics obligations because you are still an EPA employee. This document reviews the ethics rules regarding:

- seeking and post employment criminal laws and regulations;
- termination financial disclosure reporting requirements;
- employment negotiation and procurement integrity notification requirements.

Your ethics officials are here for you during and after your departure from federal service to answer your questions and provide ethics opinions, so please use us as a resource! Contact us at [ethics@epa.gov](mailto:ethics@epa.gov).

**BEFORE YOU LEAVE GOVERNMENT SERVICE**

**1. Seeking employment:** you may not participate in a “particular matter” having a direct and predictable effect on the financial interests of any person or entity with whom you are seeking or negotiating for employment or with whom you have an agreement for future employment. *See generally, 5 Code of Federal Regulations, Subpart F, 18 United States Code (U.S.C.) § 208.*

**“Seeking employment” begins when you:**

- directly or indirectly make an unsolicited communication regarding possible employment with any person or entity;
- engage in negotiations with a view toward reaching an agreement regarding possible employment;
- receive a response to a job application or employment proposal indicating an interest in employment discussions; or
- make a response, other than rejection, to an unsolicited communication from any person regarding possible employment with that person.

***“Seeking employment” ends*** when:

- you or the prospective employer reject the possibility of employment and all discussions of possible employment have terminated; or
- two months have elapsed since you sent an unsolicited resume or employment proposal, and you have not received an interest in employment discussions.

*See generally, 5 C.F.R. Part 2635, Subpart F*

*Example 1:* You are contacted by an official of a State Environmental Department in your home state. On the call, he asks if you are interested in a position with the State beginning in the next calendar year. You are currently working on an enforcement action involving the State but are interested in returning to the area at the beginning of the year. You agree to send him your resume for an open position.

*Answer:* Because you are open to the prospect of future employment and have sent your resume for an open position, *you are “seeking employment”* and must immediately disqualify yourself from participating in the pending enforcement action until either you or the State affirmatively rejects the possibility of employment or you leave the EPA to take the position, whichever is *later*.

*Example 2: Deferring employment discussions.* You give a speech to a trade association and afterwards, someone says, “hey, have you been thinking about what you’re going to do when you retire from the government? My company would be very interested in someone like you.” You say that you aren’t considering any future employment prospects until after you retire.”

*Answer:* This response will be considered a *rejection* of an offer of future employment and therefore you *are not “seeking employment.”*

*Another Example:* But, let’s say instead that you know your region is working on a regulation affecting the financial interests of the company as a member of a discrete industry sector and you respond by saying you cannot discuss future employment while you are working on the regulation, but you would like to discuss employment with the company when the regulation is final.

*Answer:* Because you have merely deferred employment discussions until the foreseeable future, you have begun “seeking employment” under the ethics regulations and now may not work on the regulation that affect the company’s financial interests. It’s not sufficient that you said you won’t talk to them until after the regulation is issued.

**2. Negotiating for future employment:** you have a financial interest in any entity in which you begin employment “negotiations” -- which means a two-way communication made either

personally or through an intermediary such as a headhunter -- with a view towards reaching an agreement regarding future employment or compensation. The financial conflict of interest law requires you to recuse yourself from participating in a government matter affecting the entity's financial interests until either party affirmatively rejects the possibility of future employment or you leave the Agency. *See 18 U.S.C. § Section 208(a).*

**Notification requirement:** once you engage in an employment negotiation, you must complete, sign, date, and file a Negotiation Notification Form within *three business days* and send it to [ethics@epa.gov](mailto:ethics@epa.gov).

**3. Procurement integrity requirements:** if you are participating in an ongoing procurement in excess of \$150,000, procurement integrity regulations require that you notify your supervisor and the Ethics Office in writing if you make or receive a contact for future employment with a competing contractor. If you do not affirmatively reject the possibility of future employment, you must disqualify yourself from further participation in the procurement until either party affirmatively rejects the possibility of future employment and the Contracting Officer approves your continued participation. *See 41 U.S.C. § 2103.*

**4. Gifts relating to bona fide employment negotiations:** you may accept gifts that are customarily provided by a prospective employer in connection with *bona fide* employment discussions (e.g., travel, lodging, and meals). If the prospective employer has matters that may be affected by your official duties, you must first disqualify yourself from EPA matters affecting the financial interests of the prospective employer. If the value of the benefits you accept meet the reporting thresholds, you have to report these gifts on your termination financial disclosure report. *See 5 C.F.R. § 2635.204(e)(3).*

**5. Post-employment training:** make an appointment to talk to OGC/Ethics or your regional ethics counsel for live counseling. In addition, we highly recommend that you take the online post-employment course [Leaving Federal Service](#).

## **6. Financial disclosure reporting requirements:**

If your current salary level is below a certain level, then you may have filed a confidential financial disclosure report. There is no requirement to file a final OGE 450 form.

However, if your current salary level is above \$132,552 *before locality pay*, then you were required to file a public financial disclosure report and are now required to file a termination report. You must submit a **termination Public Financial Disclosure Report (OGE 278e) in INTEGRITY ([www.Integrity.gov](http://www.Integrity.gov)) within 15 days of departure or no more than 30 days after departure**. Once you know your departure date, contact the Ethics Office at [ethics@epa.gov](mailto:ethics@epa.gov) so that we can assign you a termination report in INTEGRITY. You may begin the report at that

time after assignment, *but do not submit the report earlier than 15 days of your departure date*. We urge you to file the report before you depart so that you can access the electronic system using your EPA PIV card. If you do not complete the report prior to your departure date, you must notify OGC/Ethics of your forwarding email address so that we can make the necessary changes for your access from your personal computer. It is your responsibility to provide us with your forwarding information and submit a timely report.

**Late filing fee:** if you file the OGE 278e more than 30 days after the due date without requesting and receiving an extension from the Ethics Office *before the due date*, **you will be assessed a \$200 late filing fee once you file the report.** We can grant up to a 90-day extension for good cause shown. **Failure to file a termination OGE-278e will result in a referral to the U.S. Attorney General for civil action which may result in civil penalties up to \$50,000. Failure to pay late fees will result in referral for debt collection.**

### ETHICS RULES THAT APPLY *AFTER* YOU LEAVE GOVERNMENT SERVICE

#### 1. Criminal post-employment restrictions – 18 U.S.C. § 207

##### a) **Permanent Bar, 18 U.S.C. § 207(a)(1):**

You may not, on behalf of a third party, appear before or communicate with an officer or employee of the United States with the intent to influence that person on a particular matter involving specific parties in which you participated personally and substantially while a government employee. This restriction does not prohibit providing "behind the scenes" assistance. (If you are an attorney, your state bar rules may prohibit this type of assistance, but we do not provide opinions on your bar obligations).

A "*particular matter involving specific parties*" include an investigation, application, request for a ruling or determination, contract, controversy, claim, charge, accusation, arrest, or judicial or other proceeding. The term *does not include* a rulemaking or other particular matter of general applicability. "Personal" participation means that you participated directly in the matter and includes the direction or control over a subordinate employee's participation. Your participation is "substantial" if, at the time of your involvement, it was of significance to the matter. This includes decision-making, reviewing, or recommending an action to be taken. It does not include ministerial acts relating to the matter.

**b) One-Year Bar (Trade or Treaty Negotiations), 18 U.S.C. § 207(b):**

For one year after leaving federal service, you may not knowingly represent, aid, or advise on the basis of covered information, any other person (except the United States) concerning any ongoing trade or treaty negotiation in which you participated personally and substantially as an employee during your last year of federal service.

**c) Two-year restriction for former supervisors, 18 U.S.C. § 207(a)(2):**

For two years after your departure, you may not appear before or represent others with the attempt to influence government action before the federal government on particular matters involving specific parties that were actually pending under your “official responsibility” in your last year of federal service. This restriction applies only to the supervisors (including the Administrator, Regional Administrators, Assistant Administrators, etc.) but not to team leaders. For the purposes of this restriction, personal and substantial participation is not required. Note that this restriction applies even if you did not participate in the matter personally or substantially because of a recusal.

*Example:* Six months ago, a Regional Administrator recused herself from participating personally in a contract award to a company because she owns stock in that company. Upon leaving federal service, she takes a position with the winning contractor and now wants to make representations back to the federal government on behalf of her new employer on that contract. Even though she did not work personally and substantially on the contract because of her recusal, she may not, for two years after her departure, represent her new employer before the government on this contract because it was pending under her official responsibility during her last year of government service.

The definition of “official responsibility” is the “direct administrative or operating authority, whether intermediate or final, and whether exercisable alone or with another, and either personally or through subordinates, to approve, disapprove, or otherwise direct Government action.” The scope of your “official responsibility” is determined by those areas assigned by statute, regulation, Executive Order, job description or delegation of authority. For the Agency head, all matters in the Agency are deemed to be within his or her “official responsibility.” For a Regional Administrator, all pending particular matters in the Region are deemed to be within your “official responsibility.” For the General Counsel and the Assistant Administrator for Enforcement and Compliance Assurance, their areas of “official responsibility” include their respective offices as well as the ten regional counsels because of the regional alignment with Headquarters.

**d) Additional Post-Employment Restrictions For Former “Senior Employees:”**

A “*senior employee*” includes members of the Senior Executive Service (SES) (either career and non-career), and individuals who are paid at a rate of basic pay that is equal to or greater than

86.5 percent of the rate for level II of the Executive Schedule (this figure changes every January). **As of January 2021, the figure is \$172,395.**

**1) One-Year Bar on communicating with or appearing before the EPA, 18 U.S.C. § 207(c):**

For one year after serving as a “senior employee,” you may not knowingly make any communication to or appearance before an officer or employee of EPA on behalf of another with the intent to influence government action on a matter pending at the Agency. Please note that the restriction will apply to *any matter* pending before the Agency, to include broad policies, regulations, legislation, as well as a “particular matter involving specific parties” or a “matter of general applicability” that is narrowly focused on a discreet industry sector.

NOTE: if you were detailed from EPA to another department, agency, or other entity, during the period of your detail, you are deemed to be an officer or employee of BOTH departments, agencies, or other entity.

*Example:* You leave EPA as a “senior employee” to work for a regulated entity. The next week, the Agency issues a new regulation affecting your new employer. Because you are a former senior employee, you may not submit comments on behalf of your new employer to the Agency objecting to the regulatory requirements because you are still within the one-year “cooling-off” period under 18 U.S.C. § 207(c). **Remember, this is a criminal statute.**

**2) One-Year Bar Relating to aiding, advising, or representing a foreign entity, 18 U.S.C. § 207(f):**

For one year after serving as a “senior employee,” you may not knowingly aid, advise, or represent a foreign entity before any employee of a federal department or agency with the intent to influence a decision of such employee in carrying out his or her official duties. This restriction extends to all federal agencies, U.S. courts or court martials, as well as the President, Vice President, and Members of Congress. A “foreign entity” is a foreign government or a foreign political party. See 18 U.S.C. § 207. Unlike the other criminal post-employment restrictions, this restriction applies to “behind-the-scenes” activities.

**e) Exceptions to the criminal post-employment law:**

**1) Common exceptions to the permanent and two-year bars, 18 U.S.C. §§ 207(a)(1) and (2):**

- Acting on behalf of the US government - if you are re-employed by the United States or called as a witness by Congress, the post-employment restrictions do not apply. However, working for a government contractor is not covered by this exception.
- Acting as an elected official - if you are carrying out your official duties as an *elected official* of a state or local government, the post-employment restrictions do not apply.



- Employee of a Tribe – if you are an employee or an elected or appointed official of a tribal organization or inter-tribal consortium, you may represent the tribe back to the United States provided that you submit adequate notice to the EPA Administrator and OGC/Ethics.
- Providing testimony - you may give testimony under oath or make statements required to be made under penalty of perjury. Unless expert opinion testimony is given pursuant to court order, or you are called as a witness by the United States, you may not provide such testimony on a matter on behalf of any other person except the United States or Congress if the activity is one covered by the permanent restrictions at 18 U.S.C. § 207(a)(1).

**2) Additional exceptions for the one-year restriction for former “Senior Employees” before the EPA, 18 U.S.C. § 207(c):**

- Acting as an employee of a state, local government or an instrumentality thereof, a hospital, or certain educational institutions
- Acting on behalf of an international organization in which the United States participates, if approved by the Secretary of State
- Imparting special knowledge not for compensation
- Making appearances made solely on behalf of a candidate, an authorized committee, a State committee, or a political party.

**c) Compensation bar for matters affecting the government, 18 U.S.C. § 203:**

After you depart, a new employer may not compensate you for any covered representational services that were provided at a time when you were a federal employee. “*Representational services*” means communications to or appearances before federal entities (not just EPA) with the intent to influence the government on behalf of a third party. Common examples are legal and consulting services where you may share in profits or fees related to those representations once you leave federal service.

*Example:* You are a former EPA attorney who is now an equity sharing partner at Dewey, Cheatham and Howe, a prominent law firm with an extensive federal practice. As a former federal employee, you may not share in any fees attributable to the firm’s representational services before the government while you were still employed by the EPA. Therefore, your compensation plan, to include any bonus or partnership share, may not include any of the firm’s profits that comes from its covered representational services before the federal government during your federal tenure.

**7. Additional Post-Employment Restrictions For Procurement Officials**

**a) Procurement integrity provisions relating to contracts in excess of \$10 million:**

- Officials with a major role in a federal procurement in excess of \$10 million may not accept compensation from the winning contractor as an employee, officer, director, or consultant within one year after serving as: the procurement contracting officer; the

source selection authority; a member of the source selection board; or the chief of the financial or technical evaluation panel of a contract involving payment or claims of over \$10 million.

- This restriction also applies to former officials who have personally made the federal agency decision to: award a contract, subcontract, modification of a contract or subcontract, or a task order or delivery order to that contractor; establish overhead or other rates applicable to one or more contracts for that contractor that are valued in excess of \$10 million; approve issuance of one or more contract payments in excess of \$10 million; or pay or settle a claim in excess of \$10 million with that contractor. *See* 41 U.S.C. § 2104 and 48 C.F.R. § 3.104.

**b) Non-disclosure of procurement-sensitive information:** as a former employee, you may not knowingly disclose contractor bid or proposal information or source selection information before the award of a federal agency procurement contract. *See* 41 U.S.C. § 2102.

## **8. Additional Post-Employment Guidance for Officials Involved in Grants**

If you were involved in any grant competition activities while at EPA, then you should review the post employment implications under EPA's Grants Competition Conflicts of Interest and Competitive Advantage policies. While not strictly statutory or regulatory prohibitions, these policies ensure that EPA can preserve the integrity of its competitions. Applicants competing for EPA awards cannot have an unfair competitive advantage or even the appearance of an unfair advantage. If you were involved in certain grant activities, including but not limited to the development, review and preparation of solicitations, then you, your family members, or your new employer may be constrained in competing for grants under the solicitations in which you participated. For more information about grants conflicts of interest and competitive advantage policies, contact Bruce S. Binder, Senior Associate Director for Grants Competition, at [binder.bruce@epa.gov](mailto:binder.bruce@epa.gov).

## **9. A Special Note for Attorneys**

Attorneys are reminded to consult their state bar rules or seek advice from state bar counsel even if you did not work as an attorney for EPA. These rules may differ from the federal criminal post-employment rules. For example, although the federal post-employment laws permit "behind the scenes" work for a new employer on matters you worked on or on which you supervised others, the American Bar Association (ABA) restricts such communications. ABA Model Rule 1.11(a) permits a former government employee to represent a client in connection with a matter in which the lawyer participated personally and substantially as a "public officer or employee" only if he first obtains consent from the appropriate government agency. The DC Bar is even more restrictive than the ABA. DC Bar rule 1.11(a) prohibits the former employee from accepting employment in connection with a matter which is the same as, or substantially related to, a matter in which the lawyer participated personally and substantially as a public officer or employee. Under this rule, there is no waiver possibility, and the former government

lawyer is not permitted even to provide “behind the scenes” work. OGC/Ethics does not provide guidance on state bar rules.

\* \* \* \* \*

This document provides you with a summary of the major ethics rules that apply to you when you are seeking or negotiating for employment and for post-employment. *It is not a substitute for tailored ethics advice and is not an ethics opinion.* We strongly recommend that you schedule a meeting with the Ethics Office to receive an opinion on your specific facts and circumstances. Although the advice we provide you is not subject to privilege, we remind you that, when you seek advice from an ethics official, provide the relevant facts, and follow our guidance in good faith, then the ethics opinion may be a mitigating factor in any prosecution should you violate the criminal provisions. Please contact us at [ethics@epa.gov](mailto:ethics@epa.gov). Even after you leave EPA, we are here to answer your post-employment questions.

Message

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**From:** Clarke, Victoria [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=CLARKE, VICTORIA]  
**Sent:** 5/14/2020 2:46:04 PM  
**To:** Johnson, Kathleen [Johnson.Kathleen@epa.gov]  
**Subject:** Your 278 Cautionary Note  
**Attachments:** 2020 Letter of Caution KJohnson.docx

Hi there! This is Victoria from OGC Ethics. I've reviewed and certified your 2020 Annual Report but wanted to flag for you some assets that met the regulatory exemption thresholds. This cautionary note doesn't mean you have a conflict of interest. We just want to make sure you're aware of your holdings and your ethical obligations. The cautionary note also shouldn't be unfamiliar, as I believe you've received these from us in OGC before. If you have questions, don't hesitate to ask.

Victoria

Victoria Clarke  
Attorney-Advisor  
U.S. Environmental Protection Agency  
Office of General Counsel  
Washington, D.C. | 7348 WJCN  
EPA Office: 202-564-1149  
EPA Cell: 202-336-9101

Dear Kathleen --

In reviewing your OGE-278 (Public Financial Disclosure Report) in INTEGRITY, we noticed that you reported owning certain interests that might be affected by the performance of your official duties. These assets appear to be over the regulatory thresholds, so we are sending you this cautionary letter to remind you to take appropriate steps to ensure that you do not have a conflict of interest. We are not concluding that you currently have a conflict of interest; rather, you should read the information below and contact an ethics official if you have any questions. Remember, it is your obligation to ensure that your private interests (including your assets) do not conflict with your public duties. Be vigilant!

*Why Do We Raise Concerns?*

A criminal statute, 18 U.S.C. §208(a), bars you from participating in any “particular matter” that affects any of your own interests or any imputed interest (e.g., spouse or dependent children). Your interests include not only ownership interests (e.g., stock, bonds, mutual funds) but also the interests of outside entities (e.g., any organization in which you are serving as an officer, director, or trustee) and prospective employers (any entity with which you are seeking future employment). So you can’t participate in any particular matter that will have a direct and predictable effect on your financial interest.

The important point to remember here is that 18 U.S.C. §208(a) is a criminal statute. A knowing violation of this statute can result in criminal prosecution and penalties. It’s important to understand the elements of the financial conflict of interest statute. You have to participate “personally and substantially” in a “particular matter” in order for there to be a conflict of interest, and there has to be a “direct and predictable” effect on your financial interests.

*What is a particular matter?*

A “particular matter” involves any deliberation, decision or action and that is focused on the interests of specific persons/organizations or any identifiable class of persons. It includes “specific party” matters (e.g., contracts, grants, assistance agreements, lawsuits, enforcement action, permits, licenses, audits) and matters of “general applicability” (e.g., rulemaking or policy matters) that distinctively affect a particular industry or identifiable class of persons.

*What is “personal and substantial” participation?*

*Personal participation* means that you were personally involved in the matter or that you directed or controlled a subordinate’s participation. *Substantial participation* means that your involvement in the matter was of significance, which includes decision-making, review or recommendation as to an action being taken, signing or approving a final document, and/or participating in a final decision briefing.

*What is a “direct and predictable” effect on a financial interest?*

The effect must be direct and predictable and not speculative (though the actual dollar amount does not need to be ascertained). There must be close causal link between any decision or action to be taken in the matter and any expected effect of the matter on the financial interest.

### YOUR FINANCIAL INTEREST(S) OF CONCERN

We identified the following financial interest(s) that may be affected by the performance of your official duties and that exceed the regulatory exemption levels. This does not necessarily mean that you have a current conflict of interest, but we want to flag the asset(s) for you:

#### **Ex. 6 Personal Privacy (PP)**

#### **Ex. 6 Personal Privacy (PP)**

### Regulatory Exemption Levels

There are different regulatory exemption levels, depending on the type of particular matter. You can still participate if you own less than the levels below:

SPECIFIC PARTY MATTER	MATTER OF GENERAL APPLICABILITY
e.g., an enforcement action against ABC Widget Company	e.g., working on a rulemaking that affects all widget manufacturers
≤\$15,000 aggregate in ABC Widget Co.	≤\$25,000 aggregate in any one widget maker (e.g., ABC Widget Corp. or DEF Widget Corp.)
≤\$25,000 aggregate for any affected non-parties (e.g., DEF Widget Corp. which manufactures a similar product)	≤\$50,000 aggregate in all affected parties (all widget makers)

Don't forget that you have to add together your own ownership interest and any imputed interest. You also have to aggregate how many assets you own in the same sector.

EXAMPLE: You own \$8,000 worth of ABC Widget and your spouse also owns \$8,000. You cannot direct your staff to participate in an event at ABC Widget offices because you own more than \$15,000 in the company and cannot participate in any particular matter that involves or affects ABC Widget as a specific party.

EXAMPLE: Your father-in-law passed away recently and bequeathed to your spouse shares in an oil and gas company worth \$30,000. You can't work on a specific party matter involving that company and also now can't work on any rulemaking that affects all oil and gas companies.

### What to do if you're worried about a conflict

If you are concerned that you have a conflict, contact OGC/Ethics immediately. We will go over the available options for you. Typically, potential conflict of interests are resolved in one of the following ways:

1) Don't participate. This means that you do not participate in the matter at all, including attending meetings, receiving briefings or being copied on substantive documents. We recommend that you document your recusal in writing, with a copy to OGC/Ethics.

2) Divest entirely or get below the regulatory threshold. You can either sell outright on your own or, if the sale will result in a tax liability for capital gains, then you may instead contact OGC/Ethics for a "Certificate of Divestiture" before you sell. This will enable you to defer capital gains tax, but you have to ask OGC/Ethics for assistance before you divest.

3) Ask for a waiver. Only the Agency's Designated Agency Ethics Official (DAEO) in OGC is authorized to waive the prohibition of 18 U.S.C. §208(a) where the interest is "not so substantial as to be deemed likely to affect the integrity of services which the Government may expect." OGC must consult with another federal agency before issuing a waiver, which are rarely granted.

\* \* \* \* \*

If you need more information or advice, feel free to contact OGC/Ethics at [ [HYPERLINK "mailto:ethics@epa.gov"](mailto:ethics@epa.gov) ]. Any of us will be happy to assist you.

Message

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**From:** Johnson, Kathleen [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D36DE0CD8EE14FF6A6AA2F1DF9B159F6-KJOHNS05]  
**Sent:** 5/9/2020 4:35:34 PM  
**To:** Integrity.gov Notification [notifications@integrity.gov]  
**CC:** Clarke, Victoria [clarke.victoria@epa.gov]  
**Subject:** RE: Integrity.gov: Report Returned

Done. Call me if you have any questions.

Kathleen H. Johnson  
Senior Policy Advisor  
Office of Enforcement and Compliance Assurance  
Cell phone 415-640-5476  
Johnson.kathleen@epa.gov

-----Original Message-----

From: Integrity.gov <notifications@integrity.gov>  
Sent: Monday, May 4, 2020 1:09 PM  
To: Johnson, Kathleen <Johnson.Kathleen@epa.gov>  
Cc: Clarke, Victoria <clarke.victoria@epa.gov>  
Subject: Integrity.gov: Report Returned

Victoria Clarke requests that you amend your 2020 Annual Report filed 5/2/2020. You have 14 days to make the changes and submit the report back to us. Go to

**Ex. 6 Personal Privacy (PP)**

37242089648247719&sd=yybs4stLM1EwqT1qjgteTbJj9vcXCSF6h5MhN77%2BK04%3D&reserved=0 and scroll through your report to find entries that have check marks beside them. Click on the "+" button to see our comments or questions. After you make the necessary changes, go to the end of the report to hit the submit button. Otherwise, your report will stay with you instead of coming to us.

If you have any questions, end a note to ethics@epa.gov. For additional guidance, see:  
<https://gcc01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww2.epa.gov%2Fweb%2F278eGuide.nsf&data=02%7C01%7CJohnson.Kathleen%40epa.gov%7Cf42e1eadca044fe42fb008d7f04de4ad%7C88b378b367484867acf976aacbeca6a7%7C0%7C0%7C637242089648247719&sd=B5NMCTems1oi%2FWhsjFdi1670XFNzRo9rYj3d5Gqb6Sk%3D&reserved=0>